

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NEWPORT NEWS DIVISION**

<b>JOHN M. PITMAN, III, <i>et al.</i>,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>vs.</b>	)	<b>Civil Action No.: 4:16-cv-00179</b>
	)	
<b>XCENTRIC VENTURES, LLC, <i>et al.</i>,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

**MEMORANDUM IN SUPPORT OF PLAINTIFFS’  
MOTION FOR VOLUNTARY DISMISSAL**

COMES NOW, the Plaintiffs, by counsel, and hereby submit the following Memorandum in Support of Plaintiffs Motion for Voluntary Dismissal of the claims against Xcentric Ventures, LLC and Edward Magedson (the “Xcentric Defendants”).

**BACKGROUND**

Through the recent filings, the Court is undoubtedly familiar with the facts associated with this litigation. At its core, this litigation involved allegations that the Defendants conspired with one another to injure the Plaintiffs through systematic posts on a website called the Ripoff Report. This litigation was commenced in October 2016 and since that time each of the parties have actively litigated this case. Recently, the Plaintiffs and the Xcentric Defendants reached an agreement whereby the Xcentric Defendants would consent to a voluntary dismissal of this action. A Stipulation of Dismissal as to the other defendants was filed today as well.

## **ARGUMENTS AND AUTHORITIES**

### **I. LEGAL STANDARD**

The purpose of Rule 41(a)(2) is to “*freely* allow voluntary dismissals unless the parties will be unfairly prejudiced.” *Davis v. USX Corp.*, 819 F.2d 1270, 1273 (4th Cir. 1987) (emphasis added). “A plaintiff’s motion under Rule 41(a)(2) for dismissal without prejudice should not be denied absent *substantial* prejudice to the defendant.” *Andes v. Versant Corp.*, 788 F.2d 1033, 1036 (4th Cir. 1986) (emphasis added). Although the court may impose conditions on the dismissal to protect a defendant from prejudice, “defendants are entitled to protection [only] from legal prejudice, *and not from mere inconvenience or tactical disadvantage.*” *RMD Concessions, L.L.C. v. Westfield Corp.*, 194 F.R.D. 241, 243 (E.D. Va. 2000) (emphasis added); *see also Teck Gen. Pshp. v. Crown Cent. Petroleum Corp.*, 28 F. Supp. 2d 989, 991 (E.D. Va. 1998) (noting that a defendant may not prevent dismissal on the grounds that “plaintiff will gain a tactical advantage”). Pursuant to Rule 41(a)(1)(A)(ii) the parties may also dismiss an action by signing a stipulation of dismissal.

### **II. THE XCENTRIC DEFENDANTS WILL SUFFER NO PREJUDICE FROM THE DISMISSAL OF THIS ACTION AND SUCH A DISMISSAL IS OTHERWISE PROPER**

Here, no prejudice exists. Despite the apparently longevity of this action, this litigation is still in its early stages. Only one deposition has been taken, the parties are still exchanging written discovery, the Defendants only recently filed their Answer, and no Motions for Summary Judgment have been filed. *See, e.g., Bridge Oil, Ltd. v. Green Pacific A/S*, 321 F. App’x 244, 245–46 (4th Cir.2008) (upholding order granting dismissal without prejudice despite the fact that some discovery had taken place and a summary judgment motion was pending). Moreover, the Xcentric Defendant’s cannot suffer prejudice as they consent to this dismissal

Finally, the remaining Defendants, Anna Richter, Tracey Richter and Bert Pitman have endorsed a Stipulation of Dismissal. The Plaintiffs filed the fully endorsed Stipulation of Dismissal early today.

### **CONCLUSION**

For the foregoing reasons, the Plaintiffs respectfully request that this Court grant its Motion and enter the Proposed Order.

Respectfully submitted,

JOHN M. PITMAN, III, and  
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 29 2017, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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